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COMMITTEE ON THE RIGHTS OF THE CHILD

Thirtieth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Concluding observations of the Committee on the Rights of the Child: Spain

1. The Committee considered the second periodic report of Spain (CRC/C/70/Add.9), submitted on 12 October 1998, at its 798th and 799th meetings (see CRC/C/SR.798 and 799), held on 4 June 2002, and adopted* the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's second periodic report, which follows the guidelines for reporting, but regrets the late submission of the written replies to its list of issues (CRC/C/Q/SPA/2). Furthermore, it welcomes the large high-ranking delegation representing different departments and sectors sent by the State party and the frank dialogue and positive reactions to the suggestions and recommendations made during the discussion.

B. Positive aspects

3. The Committee welcomes the great progress and achievements made by the State party since the examination of the initial report to the Committee in 1994. It notes with appreciation that it has made the protection and promotion of the rights of the child a general rule in the society.

* At the 804th meeting, held on 7 June 2002.

4. The Committee welcomes the new laws adopted at the national and the Autonomous Community levels to ensure better compliance of the domestic legislation with the provisions of the Convention, in line with its previous recommendation (CRC/C/15/Add.28 of 24 October 1994, para.18). In particular, it notes the Organizational Act 1/1996 of 15 January on the legal protection of minors, the partial amendment of the Civil Code and the Civil Proceedings Act (the Protection of Minors Act), the Organizational Act 5/2000 of 12 January on penal responsibility for minors, and the amendments to the Criminal Code with reference to offences against sexual integrity (Act 11/1999) and protection of victims of ill-treatment (Act 14/1999).

5. The Committee notes with satisfaction that, in line with its previous recommendation on coordination mechanisms (ibid., para.12), the State party established the Observatory for Children in 1999. It further notes that some Autonomous Communities created institutions or services specifically responsible for children, among others the Council of Children's Affairs of Andalusia, the Office for the Defence of the Rights of the Child of the Balearic Islands, the provincial coordination committees for the care of children in Castilla-La Mancha, and the Institute for Children and the Family of Madrid, and that a network of Municipalities for children's rights was established in 1996.

6. The Committee notes the various social programmes and policies for children at the national and Autonomous Community levels, those for the provision of social services and for poverty eradication, programmes for the support of families in special situations and, in line with its previous recommendation (ibid., para. 21), the National Plan of Action for Social Inclusion of 2001 and the Comprehensive Plan for Support to the Family (2001-2004).

7. The Committee welcomes the establishment of the post of assistant to the *Defensor del Pueblo* (Ombudsman) in charge of issues related to children, who can also receive complaints. It further notes the establishment of various independent organs dealing with violations of children's rights at the Autonomous Community level.

8. In line with its previous recommendation (ibid., para. 20), the Committee welcomes the improvement of safeguards in the cases of intercountry adoption contained in Act 1/1996, and the ratification of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption of 1993.

9. The Committee notes with satisfaction that, in line with its previous recommendation (ibid. para.15), the State party has increased its assistance to developing countries in the field of children and notes in particular that Spain was the third donor country to the International Programme for the Elimination of Child Labour (IPEC) programme for the period 2000-2001.

10. The Committee notes with appreciation that Spain was the first European country to ratify both Optional Protocols to the Convention on the Rights of the Child. It further notes its ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182).

C. Principal areas of concern and recommendation

1. General measures of implementation

Committee's previous recommendations

11. The Committee regrets that some of the concerns and recommendations it made upon consideration of the State party's initial report (CRC/C/8/Add.6) have been insufficiently addressed, particularly those contained in paragraphs 12 (coordination), 13 (data collection), 14 (resources for children), 16 (non-discrimination), 18 (legislation), 22 (child asylum-seekers and unaccompanied children) and 23 (ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families). Those concerns and recommendations are reiterated in the present document.

12. **The Committee urges the State party to make every effort to address its recommendations contained in the concluding observations on the initial report that have not yet been implemented and to address the list of concerns contained in the present concluding observations on the second periodic report.**

Legislation

13. The Committee shares the concern expressed by the State party (CRC/C/70/Add.9, para.103) that future progress in the field of child legislation will have to lie in the area of real guarantees of the exercise of the rights enunciated in the legal instruments, including more explicit recognition of the Convention as a part of positive law and more widespread citation of the Convention in legal procedures.

14. **The Committee encourages the State party to fully implement the legislation using a rights-based approach and in conformity with the Convention.**

Coordination and comprehensive strategy

15. The Committee, while recognizing the efforts made by the State party to improve coordination, including through the work of the Observatory for Children, shares the concerns raised by the State party (ibid., paras. 128-129) about the need for intersectoral policies for children and to improve coordination in order to secure integrated action both at national and at Autonomous Community levels. It further notes with concern the absence of a comprehensive policy for children.

16. **The Committee recommends that the State party:**

(a) Strengthen effective coordination within and between government agencies at national, regional and local levels in the implementation of policies for the promotion and protection of the child, as it previously recommended (CRC/C/15/Add.28, para. 12);

(b) Formulate a comprehensive strategy for children on the basis of the principles and provisions of the Convention; and

(c) Develop and enforce intersectoral policies for children.

Resources for children

17. The Committee notes with concern that there is not yet a balanced redistribution of resources at the central, regional and local levels and that not all the Autonomous Communities provide the same level of social policies and services for the most marginalized groups in society, in particular, poor families, single-parent families, Roma children and children of migrant families. It notes with particular concern the budgetary problems affecting the autonomous cities of Ceuta and Melilla with reference to care of unaccompanied migrant children.

18. **In light of article 4 of the Convention and in line with its previous recommendation (ibid., para. 14), the Committee encourages the State party:**

(a) To consider ways through which all children can be guaranteed equal access to the same standard of services, irrespective of where they live for example, by establishing nationwide minimum standards for, and allocation of resources to, the implementation of the Convention's provisions, in particular in the areas of health, education and other social welfare services;

(b) To identify clearly its priorities with respect to child rights issues in order to ensure that funds are allocated to the maximum extent of available resources for the full implementation of the economic, social and cultural rights of children, in particular for children belonging to the most vulnerable groups in society; and

(c) To identify the amount and proportion of the budget spent on children at the national, regional and local levels in order to evaluate the impact and effect of the expenditures on children.

Data collection

19. The Committee, while welcoming the creation of Basic Statistics on Child Protection and of a database on children and the efforts of the Observatory for Children to harmonize the system with the Autonomous Communities, remains concerned at the fragmentation of information, which is also due to the various systems and indicators used in each Autonomous Community.

20. **In line with its previous recommendation (ibid., para. 13), the Committee reiterates its recommendation that the State party:**

(a) Strengthen its mechanism for collecting and analysing systematically disaggregated data on all persons under 18 for all areas covered by the Convention, with special emphasis on the most vulnerable groups, including Roma children, children belonging to migrant families, unaccompanied migrant children and children of economically and socially disadvantaged households;

(b) Use these indicators and data effectively for the formulation and evaluation of policies and programmes for the implementation and monitoring of the Convention.

Dissemination

21. While noting with appreciation efforts to disseminate the Convention among NGOs and the media, the Committee considers that education for children and the public at large and training activities for professional groups on children's rights need ongoing attention, in particular to provide a better understanding of the legal obligations of the Convention.

22. **In line with its previous recommendation (ibid., para. 16), the Committee reiterates its recommendation that the State party:**

(a) Continue and strengthen its efforts to disseminate the Convention both to children and to the broader public, including appropriate material specifically for children translated in the different languages spoken in Spain, including languages of migrant children;

(b) Undertake systematic education and training programmes on the principles and provisions of the Convention for all professional groups working for and with children, such as judges, lawyers, law enforcement officials, civil servants, teachers, health personnel and social workers.

2. Definition of the child

23. The Committee expresses its concern at the low age of marriage, which can be 14 years of age with the judge's permission, and at the wide variety of minimum ages in civil matters in the various Autonomous Communities.

24. **The Committee recommends that the State party review its legislation with a view to increasing the minimum age of marriage and harmonizing minimum ages for civil matters in the various Autonomous Communities.**

3. General principles

General principles

25. The Committee is concerned that the principles of non-discrimination, best interests of the child, right to life, survival and development of the child and respect for the views of the child are not fully reflected in the State party's legislation and administrative and judicial decisions, as well as in policies and programmes relevant to children at both national and local levels.

26. **The Committee reiterates its previous recommendation (ibid., para. 11) that the State party:**

(a) Appropriately integrate the general principles of the Convention, namely articles 2, 3, 6 and 12, in all relevant legislation concerning children;

(b) Apply them in all political, judicial and administrative decisions, as well as in projects, programmes and services which have an impact on all children; and

(c) Apply these principles in planning and policy-making at every level, as well as in actions taken by social and health welfare and educational institutions, courts of law and administrative authorities.

Non-discrimination

27. The Committee is concerned that the principle of non-discrimination is not fully implemented for children of Roma origin, children of migrant workers, particularly when they are not legal, and unaccompanied foreign children, especially with regard to their access to adequate health care and educational facilities.

28. **The Committee recommends that the State party:**

(a) Monitor the situation of children, in particular those belonging to the above-mentioned vulnerable groups, who are exposed to discrimination; and

(b) Develop, on the basis of the results of this monitoring, comprehensive strategies containing specific and well-targeted actions aimed at eliminating all forms of discrimination.

29. **The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of general comment No. 1 on article 29, paragraph 1, of the Convention (aims of education).**

4. Civil rights and freedoms

Corporal punishment

30. In light of its previous recommendation (ibid., para. 18), the Committee deeply regrets that article 154 of the Civil Code, stating that parents "may administer punishment to their children reasonably and in moderation", has not yet been revised. It acknowledges the information provided in the State party's replies to the list of issues that a draft law for the revision of article 154 is under development.

31. **The Committee reiterates its previous recommendation to amend article 154 in order to delete the reference to reasonable chastisement. It further recommends that the State party:**

(a) Prohibit all forms of violence, including corporal punishment, in the upbringing of children, in conformity with article 19 of the Convention;

(b) Conduct awareness campaigns and promote alternative forms of discipline in families.

5. Family environment and alternative care

Children deprived of family environment

32. The Committee notes with concern that there are different procedures for child's protection in the 17 Autonomous Communities and that they are not always compatible with the best interest of the child, especially with regard to children placed in foster families. It further notes that there is an insufficient number of family courts dealing with the protection of children not in conflict with the law and that they take a long time to deal with the judicial procedures.

33. **The Committee recommends that the State party:**

(a) Ensure that protection procedures for children have a minimum common standard and are compatible with the best interest of the child;

(b) Provide more human and financial resources to family courts so they can deal with their work more expeditiously.

Family reunification

34. The Committee expresses its concern at delays in the procedure for family reunification of recognized refugees, in particular for the issuance of the necessary visa and travel documents by the Ministry for Foreign Affairs.

35. **In light of article 10 of the Convention and in line with its previous recommendation (ibid., para. 22), the Committee reiterates its recommendation that applications for asylum made for the purpose of family reunification be dealt with in a positive, humane and expeditious manner.**

Abuse and neglect

36. The Committee, while acknowledging the important role of the System of Social Care for Children in Social Difficulties, remains concerned about the extent of domestic violence, the lack of standardized procedures for the identification and reporting of cases of neglect, ill-treatment and abuse, and the limited services for the support of victims.

37. **In light of article 19 of the Convention, the Committee recommends that the State party:**

(a) Undertake studies on domestic violence, violence against children, ill-treatment and abuse, including sexual abuse, and implement the statistical system created to keep a record of incidents of physical and mental violence and neglect against children, in order to assess the extent and nature of these practices;

(b) Adopt and implement effectively adequate measures and policies, including public campaigns, and encourage changing attitudes;

(c) Investigate effectively cases of domestic violence and ill-treatment and abuse of children, including sexual abuse within the family, within a child-sensitive inquiry and judicial procedure in order to ensure better protection of child victims, including the protection of their right to privacy;

(d) Take measures to provide support services to children in legal proceedings and for the physical and psychological recovery and social reintegration of the victims of rape, abuse, neglect, ill-treatment and violence, in accordance with article 39 of the Convention;

(e) Take into account the Committee's recommendations adopted at its days of general discussion on "Violence against children within the family and in schools" (see CRC/C/111) and on "State violence against children" (see CRC/C/100).

6. Basic health and welfare

Adolescent health

38. The Committee notes with concern the number of children and adolescents addicted to drugs, in particular synthetic drugs, alcohol and smoking, and the fact that consumption of alcohol and tobacco is socially accepted and not perceived as a risk. It further expresses its concern at the increase in the number of teenage pregnancies.

39. **The Committee recommends that the State party:**

(a) Enforce existing programmes, such as the National Drug Plan for 2002-2008 and those at Autonomous Community level, with a focus on preventive action and awareness raising on the danger of synthetic drugs, alcohol and tobacco;

(b) Take steps to address adolescent health concerns, including teenage pregnancy and sexually transmitted diseases, through, inter alia, sex education, including birth control measures such as the use of condoms;

(c) Strengthen its mental health and counselling services, ensuring that these are accessible and sensitive to adolescents.

Harmful traditional practices

40. The Committee expresses its concern at reports that female genital mutilation is practised in Spain on girls of sub-Saharan origin.

41. **The Committee recommends that the State party:**

(a) Undertake a study on the extent and nature of female genital mutilation practised in Spain or abroad on girls who live in Spain;

(b) Organize an information and awareness campaign, taking into account the result of the study, to prevent this practice; and

(c) Take the necessary steps to prohibit it.

7. Education, leisure and cultural activities

Education

42. The Committee notes with concern:

(a) The high rate of truancy and school drop-out and the difficult school integration of Roma children, children belonging to migrant families or children living in socio-economically deprived areas;

(b) That some children belonging to migrant families, particularly girls, do not complete their compulsory education or have great difficulties in attending school;

(c) The rather widespread bullying in schools;

(d) The negative impact of terrorism on children's development.

43. The Committee further notes that a Quality Education Act is under development.

44. **In light of articles 28 and 29 of the Convention, the Committee recommends that the State party:**

(a) Ensure regular attendance at schools and the reduction of truancy and drop-out rates, especially with regard to Roma children and children belonging to migrant families;

(b) Take measures to prevent bullying and other forms of violence in schools, in light of the Committee's recommendations adopted at its day of general discussion on "Violence against children within the family and in schools";

(c) Ensure that the educational process will promote the culture of peace and tolerance, as well as address the negative impact of terrorism on the physical and psychological well-being of children;

(d) Take into consideration the Committee's general comment No. 1 on the aims of education in the development of the Quality Education Act.

8. Special protection measures

Unaccompanied foreign children

45. The Committee is deeply alarmed about the conditions of unaccompanied foreign children, mostly Moroccans, especially in the autonomous cities of Ceuta and Melilla. In particular, it expresses its concern at reports of:

(a) Ill-treatment of children by police during forced expulsion to the country of origin where, in some cases, they were deported without access to legal assistance and interpretation;

(b) Failure to provide for these children the temporary legal residency status to which they are entitled under the law because the Department of Social Welfare, as their legal guardian, did not apply for it;

(c) Overcrowding and bad conditions of residential centres and cases of ill-treatment by residential centre staff and other children;

(d) Denial of access to health care and education, although guaranteed by law;

(e) Summary expulsions of children without ensuring that they are effectively returned to family or social welfare agencies in their country of origin.

46. **The Committee recommends that the State party urgently take the necessary measures in order to:**

(a) Ensure the implementation of Organizational Act 4/2000 and other laws by providing to unaccompanied foreign children access to residential care, education, emergency services and other health care, and temporary residency documents;

(b) Provide the autonomous cities of Ceuta and Melilla with the necessary financial and human resources for the care of these children;

(c) Coordinate with the Government of Morocco to ensure that when children are repatriated from Spain to Morocco, they are returned to family members willing to care for them or to an appropriate social service agency;

(d) Take all measures to prevent irregular procedures in the expulsion of unaccompanied foreign children;

(e) Investigate in an effective way reported cases of ill-treatment of these children;

(f) Provide unaccompanied foreign children with information about their rights under Spanish and international law, including the right to apply for asylum;

(g) Take all necessary measures to improve the conditions and safety of residential centres and adequately train residential centre staff;

(h) Establish effective mechanisms to receive and address complaints from children in care, monitor standards of care and, in light of article 25 of the Convention, establish regular periodic review of placements;

(i) Consider signing and ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as previously recommended (ibid., para. 23).

Economic exploitation

47. The Committee expresses its concern at reports of child labour, especially in family business and the agricultural sector, and at the lack of information on this issue.

48. **The Committee recommends that the State party:**

(a) Undertake studies, such as the one conducted by the Ministry of Social Labour and Social Affairs and the Spanish Committee for UNICEF on "Diagnosis concerning various types of exploitation of juveniles in Spain", to assess the nature and extent of child labour in Spain, in particular in family businesses and in the agricultural sector;

(b) Develop, on the basis of the results of these studies, comprehensive strategies containing specific and well-targeted actions aimed at preventing and eliminating child labour;

(c) Continue to implement programmes aimed at preventing and eliminating child labour through awareness-raising activities and detection of causative factors.

Sexual exploitation

49. The Committee expresses its concern at reports of child prostitution in the suburbs of large cities and in holiday resorts, involving vulnerable children living on the fringes of society.

50. **The Committee recommends that the State party:**

(a) Protect all persons under 18 from all forms of sexual exploitation, even when children have consented, under pressure of money, threats or, allegedly, "freely", to such acts;

(b) Organize campaigns for protection against sexual abuse, prostitution and child pornography;

(c) Implement the National Plan of Action against Commercial Sexual Exploitation of Children 2002-2003.

Children belonging to minority groups

51. While noting the State party's policies targeting the specific needs of the Roma, such as the projects for the Comprehensive Social Intervention for the Care, Prevention of Exclusion and Integration of the Gypsy people and the Gypsy Development Plan, the Committee remains concerned about the difficult social situation of Roma children and their insufficient access to the education system.

52. **The Committee strongly urges the State party:**

(a) To take measures to improve and implement more effectively existing legislation and policies with regard to assuring protection of the rights of all children from minority groups, giving particular attention to the situation of Roma children;

(b) Continue to ensure the participation of persons from minorities, including children, in the drafting and implementation of these policies.

Administration of juvenile justice

53. The Committee welcomes the adoption of the Organizational Act 5/2000 of 12 January on penal responsibility for minors and its educational character, but notes that it would need additional human and financial resource to be implemented effectively. It further notes with concern that the Organizational Act 7/2000 on terrorism increases the period of police custody and the length of prison terms for children accused of terrorism (to up to 10 years). It expresses its concern also at the fact that deprivation of liberty is not used as last resort and that in some cases detention centres are overcrowded.

54. **In light of articles 37 to 40 and other relevant international standards, the Committee recommends that the State party:**

(a) Allocate adequate human and financial resources in order to ensure the full implementation of the Organizational Act 5/2000;

(b) Align the period of police custody for children accused of terrorism with the provisions of the Act and review the length of prison terms for children accused of terrorism;

(c) Provide training on the new juvenile system to those responsible for administering juvenile justice;

(d) Encourage the use of alternative measures to the deprivation of liberty.

9. Dissemination of documentation

55. **Finally, the Committee recommends that, in light of article 44, paragraph 6, of the Convention, the second periodic report and written replies presented by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and the concluding observations adopted by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government, the parliament and the general public, including concerned non-governmental organizations.**

10. Periodicity for submission of reports

56. **In light of the recommendation on reporting periodicity adopted by the Committee and described in the report on its twenty-ninth session (CRC/C/114), the Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States parties' responsibilities to children under the Convention is ensuring that the Committee on the Rights of the Child has regular opportunities to examine the progress made in the Convention's implementation. In this regard, regular and timely reporting by States parties is crucial. As an exceptional measure, in order to help the State party catch up with its reporting obligations in full compliance with the Convention, the Committee invites the State party to submit its third and fourth reports in one consolidated report by 4 January 2008, the due date for the submission of the fourth report. The Committee expects the State party to report thereafter every five years, as foreseen by the Convention.**